

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO**

In Re:

**Victor Roffe Attias  
Caroline Julie Piket Hoffman**

Debtor.

**Case No.: 09-09634 (SEK)**

Chapter 13

**TRUSTEE'S MOTION TO CLOSE 341 CREDITOR MEETING  
AND TO DISMISS CASE FOR FAILURE TO  
PROVIDE EVIDENCE OF COMPLIANCE WITH 11 U.S.C. § 1308**

**TO THE HONORABLE COURT:**

**NOW COMES** José R. Carrión, Standing Chapter 13 Trustee (hereinafter, the "Trustee"), through the undersigned attorney, and very respectfully alleges and prays:

1. The 341 Creditor Meeting in this case was held on March 5, 2010. After the relevant inquiry, the Trustee decided to hold the meeting open for 15 days pending Debtor's remittance of evidence of having filed their 2008 PR Tax Return transcript. See *Docket No.37*. The conceded time has elapsed and Debtor is still to provide said evidence, which is a document required by Bankruptcy law.

2. The Bankruptcy Abuse and BAPCPA added to the Bankruptcy Code 11 U.S.C. §§ 1307(e) and 1308. Section 1307(e) provides:

Upon the failure of the debtor to file a tax return under *section 1308*, **on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title**, whichever is in the best interest of the creditors and the estate.

On its part, Section 1308 provides:

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under *section 341(a)*, if the debtor was required to file a tax return under **applicable non-bankruptcy law, the debtor shall** file with appropriate tax authorities **all tax returns for all taxable**

**periods ending during the 4-year period ending on the date of the filing of the petition.**

(b)(1) Subject to paragraph (2), if the tax returns required by subsections (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under *section 341(a)*, the trustee may hold open that meeting **for a reasonable period of time** to allow the debtor an additional period of time to file any unfiled returns [.]

**(Added emphasis).**

3. In In re Cushing, 401 B.R. 528 (B.A.P. 1<sup>st</sup> Cir. 2009), the Bankruptcy Appellate Panel of the First Circuit reviewed the legislative history behind §§ 1307 and 1308 and explained that Congress enacted the statutes first "to help state revenue agencies figure out whether they had claims against the debtor," and second, "to punish debtors who were delinquent in filing tax returns, by withholding confirmation until they did so." Cushing, 401 B.R. at 533-34. "Pursuant to § 1308(a), a debtor must file not later than the first date the § 341 meeting of creditors is scheduled 'all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.'" Id. at 537. Clearly, the trustee **is given discretion in § 1308 to hold open the § 341 meeting for a finite period of time to allow the debtor to file the tax returns.** Id. at 538. [Emphasis added].

4. The Trustee understands that the conceded 15 days is more than enough time for Debtors to comply with the Trustee's request.

5. In light of the aforementioned applicable law and Debtors' failure to comply with the same, **the Trustee respectfully closes the 341 Creditor Meeting held open on March 5, 2010 (Docket 37) and requests this Honorable Court to dismiss the instant case.**

**WHEREFORE**, the Trustee respectfully requests that this Honorable Court takes notice of the aforementioned and, **after notice and opportunity for a hearing**, dismiss

the instant bankruptcy case for failure to provide Tax Return filing evidence in compliance with Section 1308 of the Bankruptcy Code.

**CERTIFICATE OF SERVICE:** The Chapter 13 Trustee certifies a copy of this motion has been served by regular U.S. Mail on this same date to: the DEBTOR(s) and her/his/their attorney and all Creditors and Parties in Interest to their respective addresses of record as they appear in the attached master address list to the address of record, if any are not registered CM/ECF system participants.

In San Juan, Puerto Rico, this 22 day of April, 2010.

**/S/ Nannette M. Godreau Vázquez**  
**Staff Attorney**  
USDC-PR No. 227310

**JOSÉ R. CARRIÓN-MORALES**  
CHAPTER 13 TRUSTEE  
P.O. Box 9023884  
San Juan, P.R. 00902-3884  
Tel (787) 977-3535  
Fax (787) 977-3550

Department of Defense Manpower Data Center

Apr-22-2010 05:39:49



Military Status Report  
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
ROFFE ATTIAS	VICTOR	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

A handwritten signature in black ink that reads "Mary M. Snavely-Dixon".

---

Mary M. Snavely-Dixon, Director  
Department of Defense - Manpower Data Center  
1600 Wilson Blvd., Suite 400  
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

***More information on "Active Duty Status"***

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

***Coverage Under the SCRA is Broader in Some Cases***

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.


**WARNING:** This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.  
Report ID:CB9JPR993Q

Department of Defense Manpower Data Center

Apr-22-2010 05:41:04



Military Status Report  
Pursuant to the Service Members Civil Relief Act

 Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
PIKET HOFFMAN	CAROLINE	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

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Mary M. Snavely-Dixon, Director  
Department of Defense - Manpower Data Center  
1600 Wilson Blvd., Suite 400  
Arlington, VA 22209-2593

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Report ID:F07MGAGH4G

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

In Re:

Victor Roffe Atias  
Caroline J. Piket Hoffman

Debtor(s)

Case No.: **09-09634-SEK**

Chapter 13

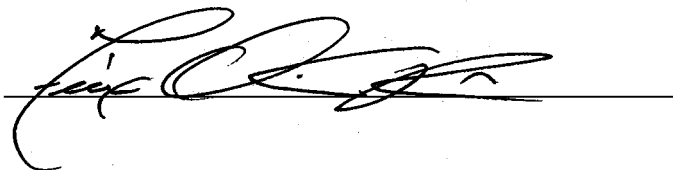
AFFIDAVIT FOR DEFAULT JUDGEMENT  
PURSUANT TO SECTION 201(b)(4)  
OF THE SERVICEMEMBERS CIVIL RELIEF ACT OF 2003

I , Felix Olivera , clerk for the Chapter 13 & 12  
Trustee's Office, declare under penalty of perjury, the  
following:

That according to the enclosed certification, provided  
by the Department of Defense Manpower Data Center (DMDC),  
the Debtor(s) is (are) not in active duty or under call to  
active duty as a member(s) of the Army, Navy or Air Forces  
of the United States of America; the National Guard; the  
Public Health Service or the National Oceanic and  
Atmospheric Administration.

To certify the above statement I sign this affidavit,

In San Juan, Puerto Rico, this April 22, 2010.

A handwritten signature in black ink, appearing to read 'Felix Olivera', is written over a horizontal line.

Félix Olivera



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The undersigned hereby certifies that a true copy of the foregoing document was mailed by first class mail to the parties listed below:

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SAN JUAN, PR 00936-3228

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MAYAGUEZ, PR 00681

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DATED: April 22, 2010

FELIX OLIVERA

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OFFICE OF THE CHAPTER 13 TRUSTEE